In The United States District Court
For the District of Delaware

James Hall,
Plaintiff

v.

David Holman, Lawrence Mcguigan and Deputy Warden Clyde D. Sagers
Defendants,

C.A. # 04-1328-GMS

Jury Trial of Twelve Demanded

Plaintiff's Motion for Summary Judgment Against Defendants David Holman Et.Al; in support of his motion plaintiff offers the following: Pursuant to Rule 36(A) Fed R. Civ. P And Rule 56(C) of the Fed R. Civ. P.

Comes Now, The plaintiff, James Hall, prose and moves This Honorable court to Grant plaintiff's Motion for Summary Judgement. Because there is no Genuine issue as to any Material fact and that the moving party is entitled to A Judgment as a matter of Law

Legal Standard

1. The Rule states that if a Request for Admission, is not timely answered, The matter is deemed Admitted Rule 36(A) Fed R. Civ. P.

Request For Admission, which Ask the opposing party to Admit or deny the truth of particular facts, that have been Admitted As Binding Rule 36(b) Fed.R.Civ.P [if A party objects to a Request, he must specifically state the Reason for the objection. The State Defendants' "non conforming" Letter-motion, Dated November 2, 2005 (D.I.), In Plaintiff objection he Alleges that State Defendants failed to support their claim As required by Fed.R.Civ.P. 26(c) The moving party must confer and make good-faith effort to Contact plaintiff and must Submit by Affidavit with pertinent factual allegation and on the Absent motion to dismiss. The Requisite is belied by their shameless Delay tactic. [Request for Admission can be Served at Any time during Litigation. The opposing party has (30) days After Service to Answer or object

Additionally, Plaintiff Alleges in his objection [Defendants want To Dupe the Court in fastening plaintiffs property filed And Legitimate discovery Request. At #2. of Plaintiff objection he has presented fact that support his position with Case Law. Demonstrating That under Fed.R.Civ.P. 56(F) And it follow the axiom that it is Inappropriat to prohibit a legitimate discovery Request where-As-here the evidence etc. is in possession of Defendant. plaintiff filed an Affidavit Demonstrating this fact. Defendants Are Seeking protection from discovery and this Honorable Court has not granted Defendant protection from plaintiff Discovery Request. Defendant failed To Timely Respond to plaintiffs. Discovery Request (i.e. Request for production of Documents, Request for Admission, Request for interrogatories, (D.I. Certificate of services. Moreover plaintiff has allowed is day grace period.

Summary Judgment is Governed by Rule 56 of the Federal Rules of Civil procedures. Under that provision Summary Judgment is warranted when "the pleadings, depositions, answers to interrogatories, and Admissions of file, Together with the Affidavits.... show that there is no genuine issue As to any Material fact And that the moving party is entitled to a Judgment As a matter of Law." Fed R. Civ. p. 56(c); See Celotex Corp. v. Catrett, 477 U.S. 317, 322 106 S. Ct. 2548, 2552 (1986); ~~Anderson v. Liberty Lobby, Inc.~~, 477 U.S. 242, 247, 106 S. Ct. 2505, 2509-10 (1986); ~~Security Insurance~~ Co. of Hartford v. Old Dominion Freight Line, Inc., when Summary Judgment is Sought, the moving Party bears an initial burden of Demonstrating that there is no Genuine dispute of Material fact to be decided with Respect to any essential Element of the Claim in issue; The failure to meet this burden warrants Denial of the Motion. Anderson, 477 U.S. At 250 n. 4, 106 S. Ct. At 2511 n. 4; Security insurance, 391 F.3d At 83. in the event this initial burden is met, The Apposing Party Must Show, through Affidavits or Otherwise, That there is a Material issue of fact for trial [FN11] Fed R. Civ. p 56(e); Celotex, 477 U.S. At 324, 106 S. Ct. At 2553; Anderson, 477 U.S. At 250, 106 S. Ct. At 2511 [FN11] A Material fact is Genuinely "in Dispute" if The Evidence is Such that a Reasonable Jury could Return a Verdict for the Nonmoving Party." Anderson, 477 U.S. At 248, 106 S. Ct. At 2510.

Defendants Admit and plaintiff Demonstrates that there is no material issue of fact in Dispute with Regards To The First (1) ESSential Element of the plaintiff's Claim.

~~Substantial Risk of Harm~~:

At Item# 8 of the plaintiff's (Request For Admission.) defendants Admitted that they knew plaintiff faced a substantial risk of harm (ID. Moreover, they knew plaintiff faced a substantial Risk of harm and disregarded that risk by failing to take Reasonable measures to that; it CAlso ID, #12 #11

~~Official knowledge of that Risk~~: official David Holman Et Al; Admit And plaintiff Demonstrates that there is no materia issue of fact in Dispute with Regard to the Sealond (2) ESSential Element of the plaintiffs Claim. It is Clearly undisputed that Defendant Possesed Actual knowledge of the pervasive Risk of harm to plaintiff (ID. DI.4. At Item#26 and Exhibit A, Exhibit B. Memorandum order From Clyde A Sayers. Dated May 17, 2004.

~~Officials failure to Respond Reasonable to the Risk~~: officials David. Holman Et.Al; Admit and plaintiff Demonstrates that there is no Material issue of fact in dispute with Regards To the third (3) ESSential Element of the plaintiffs Claims. Defendants Admitted At Item# 11 (Defendant. David Holman, Clyde D. Sayers, Lawrence Megginson Defendants intentionally ignored and failed to Respond To a particulare know Threat to plaintiff. Thus failing to Respond To Substantial Risk of Serious harm, and plaintiff was Suffered the unnecessary and wanton To Defendants Deliberate indifference (ID

officials David Holman Et. Al; Admit and plaintiff Demonstrates That there is no Material issue of fact in dispute with regards To the fourth (4) Essential Element of plaintiff claim.

Causation And injury: Defendants admit at Item # 16 plaintiff Submitted numerous Request over a period of 4, 5, months To be moved Laterally within the Same Security Level to another cell Defendant failure to Respond Reasonable has Resulted in permanent injury to plaintiff. (ID)

physical injury, necessary to support claim against prison official for failure to protect under Requirment of (PLRA): Requires observable or diagnosible medical condition Requiring treatment by medical care professionals; injuries treatable at home and with over the counter drugs heating pads rest and similar methods do not fall within parameters of Requirment 42. U.S.C.A. 1997(e) (ID DI 4 App 3. Appropriat de minimus Standard is whether injury is of nature that would Require Free-world person to visit emergency Room or have Doctor attend to, give opinion, diagnosis or medical treatment for injury or whether home treatment would Suffice Long v Hall 979. F. Supp. 481 *486.

To be Cruel and Unusual punishment, conduct which does not purport to be punishment at all must involve more than ordinary lack of due Care for the Prisoners interest or Safety. It is obduracy & wantonness, not inadvertence or error in good faith, that characterized The conduct prohibited by the Cruel and Unusual punishment clause. Whitley v. Albers 475 U.S. 312, 106 S.Ct. 1078. At 319). Defendants Admit at #16 of plaintiff Request for Admission. The physical pain, mental anguish; fright And Shock, Embarrassment, humiliation or mortification, Phychological injury inflicted upon plaintiff Demonstrates the Requisite mental State for a finding of Deliberate Indifference

Defendants Claim p T.8 of their motion to Dismiss

Plaintiff fail to Show either Actual knowledge or a Substantial Risk of Harm Reason being that Defendant (stamped Recived) and Admit to actual knowledge David Holman placed his in. Trials By his Name ID) And Defendant Holmans has actual knowledge of The Danger. Defendants Mcguigan, Sagers ID Recived IXC Reply with Doc 1, Initial; Captain Sagers, Recived Security Defendant have Actual knowledge and also Admit (Plaintiff Request for Admission Item # 8 # 10, Defendant, failed to take Reasonable Measure to guarantee The safety of inmate, Defendants conduct or lack of conduct demonstrate a knowing indifference to a Substantial Risk of Serious harm to Plaintiff #2, Defendant Clyde Sagers, David Holman, Carmen Mcguigan knew that plaintiff faced a Substantial Risk of harm and disregarded that Risk by failing to take Reasonable Measure to abate it. ID #8) (of Plaintiff Request for Admission). Defendants Claim that plaintiff, in his Complained that Prison officials, should have knowledge of a Risk pl 26), Defend Misrepresent The courts Ruling (court found that it does not amount to deliberate indifference if an official fails to alleviate a Significant threat that he should have identified but failed to find Farmer, 511 U.S. at 837-838, Rather the holding is. But an officials failure To Alleviate a Significant Risk that he should have perceived but did not, while no cause for Commendation, cannot under our cases be condemned as the infliction of punishment, the instant case, Plaintiff Complained about not being able to protect himself from Attack And Asking officials to move him, would Suggest, fear, Misery And Asking for Intervention A.SAP "As Soon As possible" ID.

Defendant Claim in their Motion to Dismiss P. 9

Defendants are Immune in their official Capacities

A Suit against State official, in their official capacities is Treated as a Suit Against the State Hafer v. Melo, 502 U.S. 21 (1991). Qualified Immunity: Does not protect municipalities or officials Sued in their official capacities, Owens v. City of Independence 445 US. 622 100 S.Ct. 1398 (1980). Moore v. Morgan, 922 F.2d 1553, 1556 (11th Cir. 1991). P.C. v. McLaughlin, 913 F.2d 1033, 1039 (2d Cir. 1990). Plaintiff seeks injunctive relief requiring prison officials To use available Inmate classification information and procedures to predict compatibility of incoming cellmates for double celling because current Random Assignment of cellmates Substantially increase Risk of violence, in violation of the Eighth Amendment (ID D.I. 4 and D.I. 2 at #18). Defendant are not entitled to Qualified Immunity in the instant case. Moreover the Plaintiff claim is brought against defend in there Individual capacities the Eleventh amendment does not bar damages Suits against them for deprivation of federal Rights caused by those official under color of State Law, Scheuer v. Rhodes 416, U.S. 232 238 94 S.Ct. 1683, 1687, 40 L.Ed. 2d 90 (1974); Ex parte Young, 209 U.S. 123, 159-66, 28 S.Ct. 441, 453-54, 52 L.Ed. 714 (1908) (A nominally-suit against an Individual official, however nevertheless may be viewed As one against the State if the Suit Seeks Damages from the State Treasury See Kentucky v Graham 473 U.S. 159, 165-66 & n.11, 105 S.Ct 3099, 3104-05 & n.11, 87 L.Ed. 2d 114 (1985); Brandon v. Holt, 469 U.S. 464 470-71 & n. 18, 105 S.Ct 873, 877 & n.18, 53 L.Ed. 2d 878 (1985); Harris v Pressley. 755 F.2d 338, 348 (3d Cir, 1985) The Eleventh Accordingly provides no Sheild in this case, Defendant whom Relief is Sought, David Holman Et. Al, Defendants not from the State Treasurer.

The Relevant Dispositive inquiry in determining whether a Right is clearly established is whether, it would be Clear to a Reasonable officer that his Conduct was unlawful in the situation he confronted See Wilson v. Layne, 526 U.S. 603, 615, 119 S.Ct. 1692, 143 L.Ed.2d 818 (1999) As the Supreme Court Explained in Anderson the Right allegedly violated must be defined at the Appropriate level of Specificity before a court can determine if it was (clearly Established) Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). if the law did not put the officer on notice that his conduct would be clearly unlawful, Summary Judgment based on Qualified Immunity is Appropriate (see Malley v. Briggs, 475 U.S 335, 341, 106 S.Ct. 1092, 89 L.Ed 2d 271 (1986) (qualified Immunity protect "all but the plainly incompetent or those who knowingly violate The law. In determining whether Jail Condition violate 8 Amendment court of appeals need not separately weigh each of the challenged institutional Practices and conditions the court looks instead to the totality of condition. in Light of the News-Journal's investigation The Department countlessly Affirmed Condition at the Prison where plaintiff James Hall is incarcerated are indeed cruel and unusual (ID Exhibit D.) In Alberti v. Klevenhagen, 790 F.2d 1220 (5th Cir. 1986) (Assaults Among inmates) It's Constitutional Standard with Preexisting Case law make the plaintiff's claim apparent that a inmate is afforded Reasonable protection from assault by fellow Inmates

James Hall (signature)

James Hall

1181 Paddock Rd

12-19-05

Date

"Constitutional Standard"

Alberti v. Klevenhagen, 790 F.2d 1220 (5th cir. 1986) (Assaulting Among Inmates), Violence and Sexual Assaults Among Inmates May Rise to the Level Rendering Conditions Cruel and unusual

Jones v Diamond, 636 F.2d 1364, 1365 (5th cir. 1981) (en banch) (Citing Miller v Carson, 563 F.2d 741 (5th cir. 1977)), William v. Edwards, 547 F.2d 1206 (5th cir 1977) cert dismissed Subnom. Ledbetter v. Jones, 453 U.S. 950, 102 S.ct. 27, 69 L.Ed.2d 1033 (1981). the Relevant inquiry "springs from constitutional Requirements... Rather than a courts idea of how best to operate a detention facility." Bell v. wolfish, 441 U.S. 520 539, 99 S.ct. 1861, 1874, 60 L.Ed.2d 447, 469 (1979). The District court Expressly Recognized it's limited Roll it that litigation. 600 F.Supp. at 456-57 these limitation do not mean, however, that federal courts must adopt a "hand off" approach to problems of Jail administration," Bell, 441 U.S. At 562, 99 S.ct. 1861, 1874, 60 L.Ed.2d. At 488. there is no iron curtain drawn between the constitution and prisoner's of this county," wolfish v McDonnell, 418 U.S. 539, 555-56, 94 S.ct. 2963, 2974, 41 L.Ed.2d. 935, 950 (1974). "A prisoner whether already convicted of a crime or merely awaiting trial, does not shed all his constitutional rights' when he puts on Jail clothing" Jones, 636 .2d at 1368. we therefore next set out the standard used to draw the line between permissable Correctional officer unconstitutional conditions and impermissible Jail administration. The Eighth Amendment imposes the constitutional limitations upon punishments: they cannot be "cruel and unusual." this is a flexible standard, no static test can exist by which courts determine whether conditions of confinement are cruel and unusual, For the Eight Amendment "must draw it meaning from the evolving standard of decency that mark the progress of a maturing society" Rhodes v. Chapman 452 U.S. 337, 346, 101 S.ct 2392, 2399, 69 L.Ed.2d 59, 68 (1981) [illegible]

, 356 U.S. 86, 101 78 S.Ct. 590, 598, 2L.Ed.2d 630, 642 (1958)(Plurality opinion). while the Eighth amendment determination must not be merely a Judges Subjective view, the constitution contemplates that ultimately a court own decision/Judgment will be Brought to bear on the Question. Id. 452 U.S. at 346, 101 S.Ct. At 2399, 69 L.Ed. 2d at 68-69. Jail conditions must not fall below a minimum Standard of decency Required by the Eighth amendment. conditions which "alone or in combination, may deprive Inmates of the minimal civilized measures of life necessities.... could be cruel and unusual under the contemporary standard of decency... Id.

Brief in Support of Plaintiff Injunctive order

Plaintiff Declares/states that there is no Material issue of fact in dispute with Regards to the totality of conditions that are dangerous to Plaintiff and future and current DCC. population Defendant admit At (Plaintiff Request for Admission At Item 26

Defendant David Holman. Et al; Admit, many acts of violence at the (MHU) go unreported and undocumented for these Reasons:

1) if a Inmate Reports violence by another Inmate, Inmates do not want to be labeled "Snitches" and they often do not Report violence

2) if an Inmate Reports violence, in which he is involved, Both he and the other inmate will Recive Misconduct Reports and will be disciplined and Transported from (MHU) to (SHU) (Segregation of the highest Supervision) Id.

Farmer v. Brennan * at 845-846. prisoners who believe that his being subjected to substantial risk of serious injury due to officials failure to protect him from harm. is not required to wait for "Tragic event" such as an actual assault before obtaining relief, but may bring an injunction seeking. based on claim that officials are knowingly and unreasonable disregarding objectively intolerable risk of harm and will continue to do so (T1) (T. 4 paragraphs 17-19)

the plaintiff specifically and with the appropriate particularity demonstrates fact that allow his claim for injunction relief to proceed.

The plaintiff Demonstrates that he and All other Inmates At CDCC) face a pervasive Risk of harm because they belong to a Identifiable Group Singled out by The Religious Group

1. Their's a Group that Masquerades as a Religious Group (i.e, The Muslim's), These Individuals Recruite Inmates for purpose's of [Exstortion, Protection, Group Violence, Intimidation.) Inmates not Affiliated with this class. Are Reffered To as ("Coufars, i.e, non-belivers). And Are Singled out for Recruitment in an event a (non-belivier). Refusse's the Advancement it is most Likley they Aggressor will become persistent And promice's of protection, Exceptance Ect. will Follow

with dual intention's plaintiff. Demonstrates that on 6-6-04 he was Subjected to the Group Violence of this classic gang behavior. ID Complaint (D.I.4 And D.I.2 At p3)

The Inmate who plaintiff Complained to defendants about belong's to this Group. The Analasis of 6-6-04 Suggest that The plaintiff was Attacked (Twice) on Said Date Receiving a Serious injury The Defendants knew that the plaintiff faced a pervasive Risk of Serious harm Actual knowledge of this fact on the part of the Defendants is Supported by plaintiff's Several Letter's To them informing them of Same and Asking for help wich never came Also ID Item# (D.I.4 And D.I.2)

James Hall
1181 Paddock RD Smyrna
Delaware D.C.C
James Hall pro,se

12-19-05
Date

3) if an Inmate Report a violent incident, but theire is neither a "witness" Nor physical evidence of an assault (Ie, Bleeding, cuts, Abrasions) of the Reported violence, neither Inmate is disciplined, Leaving the victimized inmate labled as a snich Creating a Really Substantial Risk of further Attempts on the victims Safety

37th Item. The Defendant David Holeman et.al., knew that the plaintiff faced a pervasive Risk of harm

Item 39 The Defendant David Holman et.al Subjected plaintiff To violent assault. and Acknowledge. it is not part of the penalty that criminal offend pay for there offenses against Society Plaintiff has Demonstrated that he is incarcerated under conditions posing a Substantial Risk of Serious harm as noted: plaintiff Suffered from a broken right hand And was Literally Defenseless and Defendants were aware of this fact and yet despite their knowledge they disRegarded the Excessive Risk to plaintiffs health and Safety thus the plaintiff was suffered the unnecessary and wanton infliction of pain in violation of the Eighth Amendment Id.

This Deliberate Attitude of Defendants David Holman et.al, Clearly Demonstrate that there is no material issue in dispute and the plaintiff is Entitled to a Judgment as a matter of Law.

In The United States District Court
For The District of Delaware

James Hall
Plaintiff,
v.
David Holmes et al.,
Defendants.

C.A. No. 04-1328-GMS
Jury Trial of Twelve Demanded

Affidavit of James Hall

Come Now, The plaintiff James Hall and states under penalty of perjury that the statements and facts made herein are true and correct to the best of affiants knowledge.

1) Defendants have not submitted an adequate factual case. (ID 1-11 of plaintiff reply to Defendants Rule 12(b)(6) Motion / Summary Judgment affirms a Genuine factual issue on all points which plaintiff bear the Burden of proof

2) plaintiff cannot submit the necessary affidavits in opposition a motion for Summary Judgment Plaintiff submits this instant affidavit

3) Asking this Honorable Court to Deny the Summary Judgment motion because the plaintiff has not had an opportunity to complete Discovery, Defendant have not yet complied with plaintiff's Discovery Request (A court should not Grant summary Judgment against a party who has not had an opportunity to pursue Discovery or when discovery Request have not been answered. Schlachetzki V. Coughlin 993, F.2d 306, 309-10 (2d cir 1993)

where the facts are in the possession of the moving party, a continuance of a motion for Summary Judgment should be granted as a matter of course Costlow V. United States 552. F.2d 560, 564 (3d cir. 1977); accord Baker V. Manor island correctional center, 859 F.2d 124, 127, (9th cir 1988). Jackson V. Procunier 789 F.2d 307, 312 (5th cir 1986)

Wherefore, The Plaintiff pray this Honorable Court Deny Defendants Motion for Summary Judgment/Motion to Dismiss and Schedule this matter for Discovery

Plaintiff Seek Pleading Leniency under Haines v. Kerner

James Hall

James Hall
1151 Paddock Rd Smyrna 19977
D.C.C

12-19-05
Date:

In the United States District Court
for the District of Delaware

James Hall,
Plaintiff

v.

David Holman Lawrence Mcguigan
And Deputy Warden Clyde D.
Sagers
Defendants.

C.A.# 04-1328-GMS
Jury of twelve
Demanded

Affidavit of James Hall,

Come Now, The plaintiff James Hall and States Under Penalty of Perjury, being Competent To make this declaration and Having personal knowledge of the matters stated herein, declares pursuant to 28 U.S.C. § 1746:

12-19-05
Date

James Hall Pro Se
1181 Paddock Rd. Smyrna
Delaware D.C.C.

James Hall, being duly Sworn, deposes and says

1. I am the plaintiff in this case. I make this affidavit in support of my motion for Summary Judgment

2 On October 26, 2005. I served on the defendants counsel a Request for production of Documents plaintiff Request for Interrogatories, and plaintiff Request for Admission. which is attached to this affidavit As Exhibit A

3. Defendant opposition to plaintiff's properly filed and Legitimate discovery Request offer only a vague claim that discovery should not proceed because of their motion to dismiss. However no motion has yet been filed and plaintiff objected to this Frivolous "non conforming letter. Which has no Certificate of Service. Also no Affidavit as to Good faith efforts As required by the Rule defendants failed to support their objection with pertinent factual allegations.

Defendants have not seen fit to properly file a motion for protection of discovery; and Assuming arguendo That the court considers defendants "non conforming" letter To the Clerk of the court Date, November 2. 2005 as a Request for adjournment from discovery, it is nevertheless improper for several Reasons: The least of which being defendants offer no persuasion or Justification for their, et cetera... unorthodox and specious letter Request, it is a nonconforming Motion, and inappropriate under Fed. R. Civ. P 56 (f). (see Attached B-1: Objection dated 11-9-05 with attached exhibits) Moreover, The court has not granted defendant their bad faith, non conforming request, and the defendants bear The Results of their decision not to deny admissions And instead attempt to Stall and otherwise frustrate the progress of the instant non-frivolous Suit and plaintiff's good faith, timely and necessary discovery Request.

Additionally Matter. Defendants filed a formal opposition to stay Plaintiff discovery. Moving Plaintiff herein incorporate by Reference his argument set forth in his motion to Strike Defendants Motion to Stay Discovery At Item #3 Defendants Abandoned Their Letter to incorporate by Reference their formal Request to Stay Plaintiff's discovery until the Honorable court Rule on their Motion to Dismiss the instant Request is Stated the (30) day has Elapsed and defendant failed to deny or otherwise to Plaintiff Admission in a timely manner.

Certificate of Service

I, James Nace, hereby certify that I have served a true

And correct cop(ies) of the attached: (2) Motion for Summary Judgment (Plaintiffs)

upon the following

parties/person (s):

TO: Lisa Bacchi
800 N. French Street, 6th Floor
Wilmington, DE 19801

TO:

TO:

TO:

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 19 day of December, 2005

James Nace

I/M James Holt 50,58

SBI# 167584 UNIT W-C-9

DELAWARE CORRECTIONAL CENTER

1181 PADDOCK ROAD

SMYRNA, DELAWARE 19977

Office of the Clerk

844 N. King Street, Lockbox 18

Wilmington, De 19801-3570